



CITY OF LODI COUNCIL COMMUNICATION

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AGENDA TITLE: Introduce Ordinance Amending Lodi Municipal Code Chapter 13.12 "Sewer Service" by Repealing and Reenacting Section 13.12.150 "Connections Outside the City" (Flag City Wastewater Service)

MEETING DATE: September 19, 2007

PREPARED BY: City Attorney

RECOMMENDED ACTION: Introduce Ordinance Repealing and Reenacting Lodi Municipal Code Section 13.12.150 "Connections Outside the City."

BACKGROUND INFORMATION: At its meeting on April 4, 2007 the City Council authorized a contract to provide domestic wastewater service to County Service Area 31 (Flag City) at the Board of Supervisors request that Lodi provide sewer service to Flag City. The contract remains subject to the condition that the Council amend LMC 13.12.150 to permit wastewater connections by public agencies outside the City Limits.

The proposed amendments will permit public wastewater agencies outside the City to connect to the City's domestic wastewater system on the same conditions set for the in the approved contract. Major points are:

- The agreement facilitates the goals of the City and County in supporting compact land use and development, and discouraging "leap frog development" and "urban sprawl."
- The service area will be issued a City discharge permit with typical requirements including our ability to make changes in the event of changes in State or Federal requirements. The only limitation is that the permit can be no stricter than the City's State permit.
- Annual volume is limited and potential increases are linked to tax-sharing agreements.
- Service charges would be at standard City wastewater service rates plus a 35% surcharge. (Note, the charges would be based on actual flow, BOD and suspended solids as currently done for high strength users, as measured at one point of service. The City would bill the County; we would not be billing individual customers.)
- Wastewater Impact Fees (Capacity fees) would be paid. (The amount is roughly \$6 million, however, an engineering analysis may provide alternatives that could reduce the capacity impacts and associated costs).
- An administrative fee of \$250,000 is to be paid to the City upon execution of the agreement.
- The County will build the necessary facilities to connect to the City's facilities: the agreement covers treatment only; collection system maintenance is not included.

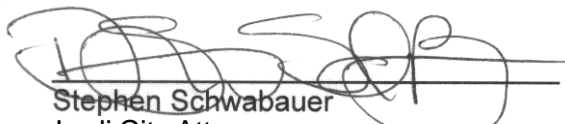
APPROVED: 
Blair King, City Manager

- The service area is limited to the existing established service area unless the City agrees to the change which is linked to tax-sharing.
- The agreement provides for City review over new development to elicit compliance with discharge requirements.
- The agreement requires the County work cooperatively with City staff to draft Design Guidelines for CSA 31 (County Board of Supervisors approved Design Guidelines September 11, 2007, Lodi Planning Commission approved Design Guidelines August 22, 2007).
- The County consents to adding Flag City in the Lodi Tourism Business Improvement District, however the City will have to process the change, (which County has done).
- All costs of evaluating impacts to the City's facility, processing environmental review and associated staff costs are to be paid by the County.

The approved agreement limits the County to 0.19 MGD (190,000) of the Wastewater Plant's 8 MGD capacity without a new tax sharing agreement. If the County exceeds the 0.19 MGD limit, then the County may negotiate a new tax sharing agreement for additional wastewater capacity up to a not to exceed limit of 0.21 MGD.

If the Council were to disapprove the amendments, the Agreement would not take effect.

FISCAL IMPACT: Depending on actual flow and strength, the surcharge revenue to the General Fund would be in the range of \$50,000 to 100,000 per year. The capacity fee would be a significant cash infusion to the Wastewater Fund, which has a number of high-cost capital needs in the near future. One potential long-term concern is that Flag City's effluent is considerably higher in salts than the City's effluent. This is partly due to their source water (wells) and the businesses located in the District. The City's new discharge permit is likely to have a salinity limit. While it appears we will be able to meet that limit including Flag City, this could be problematic in the future. This potential impact is mitigated by our ability to amend their discharge permit to require a reduction in the salinity of their wastewater.



Stephen Schwabauer
Lodi City Attorney

Attachment

cc: Richard Prima, Public Works Director
Randy Hatch, Community Development Director
Manuel Lopez, San Joaquin County Administrator
Tom Flinn, San Joaquin County Public Works Director
Charlie Swimley, Water Services Manager



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The proposed amendments will permit public wastewater agencies outside the City to connect to the City's domestic wastewater system on the same conditions set for the in the approved contract. Major points are:

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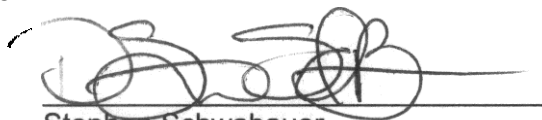

Blair King, City Manager

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The approved agreement limits the County to 0.19 MGD (190,000) of the Wastewater Plant's 8.5 MGD capacity without a new tax sharing agreement. If the County exceeds the 0.19 MGD limit, then the County may negotiate a new tax sharing agreement for additional wastewater capacity up to a not to exceed limit of 0.21 MGD.

If the Council were to disapprove the amendments, the Agreement would not take effect.

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Charlie Swimley, Water Services Manager

DRAFT

ORDINANCE NO. ____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
LODI AMENDING LODI MUNICIPAL CODE TITLE 13 –
PUBLIC SERVICES – CHAPTER 13.12, "SEWER SERVICE,"
BY REPEALING AND REENACTING SECTION 13.12.150
RELATING TO "CONNECTIONS OUTSIDE CITY"

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LODI AS FOLLOWS:

Section 1. Lodi Municipal Code Title 13, "Public Services," Chapter 13.12, "Sewer Service," is hereby amended by repealing and reenacting Section 13.12.150 – relating to Connections Outside City, and shall read as follows:

A. WHEREAS:

- a. San Joaquin County will retain its authority over land use approval for wineries located within County jurisdiction.
- b. The City of Lodi's General Plan contains the following land use element goals:
 - i. Policy LU-A.1 – The City shall seek to preserve Lodi's small-town and rural qualities.
 - ii. Policy LU-A.4 – The City shall promote reinvestment in downtown Lodi and in the Eastside area that upgrades the general quality of development in these areas.
 - iii. Goal LU-B – To preserve agricultural land surrounding Lodi and to discourage premature development of agricultural land with **nonagricultural** uses, while providing for urban needs.
 - iv. Policy LU-B.1 – The City shall encourage the preservation of agricultural land surrounding the City.
 - v. Policy LU-B.2 – The City should designate a continuous open space greenbelt around the urbanized area of Lodi to maintain and enhance the agricultural economy.
 - vi. Policy LU-B.6 – The City shall encourage San Joaquin County to retain agricultural uses on lands adjacent to the City.
 - vii. Goal LU-D – To promote and retain development in downtown Lodi.
 - viii. Policy LU-D.1 – The City shall preserve and promote downtown Lodi and the City's social and cultural center and an economically viable retail and professional office district.
 - ix. Policy LU-D.3 – The City shall enhance pedestrian activity and pedestrian amenities in downtown Lodi.

- c. The City encourages compact development and discourages leapfrog development and urban sprawl within the Highway 12/Interstate 5 corridor, all of which would be inconsistent with the above general plan goals. The City's General Plan is committed to the above goals within its own boundaries as well, stating the following:
- a. **A-5** The City shall require specific development plans in areas of major new development.
 - b. **E-2** The City shall promote downtown Lodi as the primary pedestrian-oriented, commercial area of Lodi.
 - c. **E-4** The City shall ensure the new commercial development be designed to avoid the appearance of strip development.
 - d. **E-7** In approving new commercial projects, the City shall seek to ensure that such projects reflect the City's concern for achieving and maintaining high quality development.
- d. Providing wastewater treatment service to Flag City on the condition that service not be afforded to developments that conflict with the goals set forth herein furthers those goals by concentrating development in an existing County Service Area with set boundaries.
- e. County acknowledges the goals set forth in the Lodi General Plan as set forth above and has similar provisions in its General Plan which encourage agricultural uses, compact land use and development, and discourage "leap frog development" and "urban sprawl." Toward these ends, the County General Plan provides:
- 1. To make efficient use of land and promote a functional development pattern with varied and compatible land uses.
 - 2. To minimize the effect on agricultural lands and other environmental resources while providing for orderly growth.
 - 3. To create a visually attractive County.
 - 4. To avoid the problems and costs imposed on local government by development that does not have adequate services.
 - 5. Rural Communities Shall:
 - (a) be planned to have minimal growth, mainly infill development, with expansion discouraged;
 - (b) be planned to serve the immediate needs of the community's residents or the surrounding agricultural community;
 - (c) have a minimum land area of 50 acres or have been identified on the General Plan **1995** map as a residential area.

6. Development shall be orderly and compact.
7. Developments should occur on vacant lots within existing communities as “infill” before extending beyond the current developed areas of a community.
8. Freeway Service.
 - (1) Function: Provide for commercial uses oriented almost exclusively to serving the needs of the freeway traveler.
 - (2) Typical Uses: Travel-related businesses including gasoline service stations, food and beverage sales, eating and drinking establishments, and hotels and motels.
 - (3) Development and Locational Criteria: Freeway Service areas shall be:
 - (A) designated only adjacent to full freeway interchanges where development will be easily accessible and visible to the freeway traveler.
 - (B) limited in number to encourage clustering of uses at selected interchanges:
 - (C) limited in area in order to reduce impacts on surrounding land uses and control the physical and visual extent of these areas;
 - (D) developed so that buildings occupy no more than 60 percent of the lot and are no more than 3 stories in height; and
 - (E) designed in an attractive manner that creates a favorable impression of the County by considering the overall site design, landscaping, scale of development, signage, relationship to adjacent uses, circulation and parking, and architecture.
- f. There is a need for upgraded sewer treatment facilities to service Flag City and the parties wish to cooperatively ensure that any development that occurs in Flag City is orderly, compact and in compliance with the goals of the City and County General Plans.

B. NOW THEREFORE BE IT FURTHER ORDAINED AS FOLLOWS:

1. Service Outside Lodi. Except as set forth below, no discharge from private facilities or properties outside the City of Lodi shall be allowed into the Domestic Sewerage or storm drainage systems. The City Council may by contract allow connection from 1) winery facilities outside Lodi to the Industrial Sewerage System on the terms set forth in this section so long as the system has adequate existing capacity to service

the waste 2) publicly owned wastewater systems ("Public District") to the Domestic Wastewater Treatment System on terms set forth in this section so long as the system has adequate existing capacity to service the waste.

2. Terms of Private Industrial Connection. Any winery wastewater connection permitted pursuant to the Contract called for in this Section shall contain the following minimum terms:

- a. **Permit:** Applicant shall comply with the terms of the Industrial System Discharge Permit to be issued by the City, which will include but not be limited to limitations on flow, BOD, ph, TDS, and suspended solid concentrations and prohibitions on discharge of hazardous waste in conformance with the City's Discharge Permit.
- b. **Rate/Surcharge:** Winery's rate for discharge shall be set at 150 percent of the City's standard published rate for Industrial Waste.
- c. **Capacity Charge:** Winery shall pay a one-time capacity charge based on annual flow and BOD loading prior to connection per this chapter.
- d. **Non-Assignment:** Applicant may not sell capacity or accept wastewater from other locations.
- e. **Downtown Retail Presence:** Applicant shall open and operate a wine tasting room to market its products in Downtown Lodi during the entire term of its connection to the City's sewer system. The establishment shall be operated within the following minimum requirements:
 - i) it shall be at least 500 square feet, have its products available for sampling and sale, and be open a minimum of 40 hours per week, including Saturday and Sunday and shall be located in Downtown Lodi as defined by the area bordered by Church Street, Lodi Avenue, Lockeford Street, and the Union Pacific Railroad tracks.
 - ii) If this condition cannot be met within 12 months of connection, Applicant shall pay an annual downtown development and promotional in-lieu fee in the amount established by the City Council. The fee shall be retroactive for one year and shall be assessed annually (until such time as the requirements of subsection i of this paragraph have been satisfied) as annually adjusted according to the Bay Area-All Items Consumer Price Index. If condition i above cannot be met within six years of connection, this Agreement will terminate and Applicant will be required to make alternate arrangements for its wastewater.
- f. **Annexation.** Applicant, in consideration for receiving City sewer service, will consent to the annexation to the City of Lodi of its property served by the City Industrial Sewerage system, waives any right to protest the annexation, and assigns to the City any right to vote on the annexation. Annexation shall occur when and if the City deems the annexation of the subject property feasible and advisable. In the event the annexation is sought by Applicant, Applicant agrees to pay City an amount to cover the subject property's proportionate share of the costs to conduct the annexation. In the event that the Applicant does ultimately connect to City service, Applicant agrees to

enter into a short-form memorandum of agreement expressing the obligations of this paragraph in recordable form.

3. Terms of Public District Connection:

Any delivery of wastewater permitted pursuant to this section shall be subject to the following minimum terms:

- a. Permit: Public District shall comply with the terms of a Discharge Permit to be issued by the City which will include but not be limited to limitations on maximum flow, BOD, pH, TDS and suspended solid concentrations and prohibitions on discharge of hazardous waste in conformance with the City's NPDES Permit. The terms of this Discharge Permit will be no more stringent than those required under the City's NPDES permit. However, City may change the terms of the discharge permit without notice if necessary to comply with State or Federal requirements.
- b. Volume: Limits will be set by contract that cannot exceed the White Slough Wastewater Treatment Plant's capacity.
- c. **Rate/Surcharge:** Public District's charges will be as established by the City for its high strength customer users plus a ~~35%~~ surcharge **in an amount to be set by contract.**
- d. Capacity Charge: Public District shall pay a one-time capacity charge based on the then-current rates for new city development at the time of connection. (These charges are adjusted annually). Additional capacity charges at the current City rates will apply for each increment of effluent over the amount initially paid. Capacity charge reductions or credits may be granted for steps taken by Public District to minimize impacts to City's overall treatment plant capacity through pre-treatment, off-peak delivery, or other mutually agreed strategies.
- e. Administrative Charge: Public District shall pay City a fee to be set by contract as a one time administrative charge upon the execution of such contract.
- f. Public District will be solely responsible for all costs associated with installing a pipeline ("Collection Facilities") to connect to Lodi's System.
- g. City will bill for its services directly to Public District and not to individual customers. Annual billing will begin with commencement of flow to the City's facility and will be billed in advance for a twelve (12) month period, based on estimated flow and strength. Subsequent annual billings will be based on **actuals** for the prior twelve (12) months. Public District will pay all invoices within thirty days of the date of the invoice.
- h. Neither Public District will knowingly allow any person or entity to discharge to its Collection Facilities whose property is outside the Public District Service Area, without prior City approval, which City may withhold in its absolute discretion.
- i. **Reimbursement.** Public District shall reimburse the City for all costs incurred by the City in connection with the project.

Section 2 - No Mandatory Duty of Care. This ordinance is not intended to and shall not be construed or given effect in a manner which imposes upon the City, **or** any officer or employee thereof, a mandatory duty of care towards persons or property within the City or outside of the City **so** as to provide a basis of civil liability for damages, except as otherwise imposed by law.

Section 3. In the event that any portion of this Ordinance is determined to be invalid or illegal then the entire Ordinance will be repealed and reenacted back **to** its form prior to September 21, 2005.

Section 4. All ordinances and parts of ordinances in conflict herewith are repealed insofar as such conflict may exist.

Section 5. This ordinance shall be published one time in the "Lodi News Sentinel," a daily newspaper of general circulation printed and published in the City of Lodi. and shall be in force and take effect 30 days from and after its passage and approval.

Approved this ____ day of _____, 2007.

BOB JOHNSON
Mayor

Attest:

RANDI JOHL
City Clerk

State of California
County of San Joaquin, **ss.**

I, Randi Johl, City Clerk of the City of Lodi, do hereby certify that Ordinance No. ____ was introduced at a regular meeting of the City Council of the City of Lodi held September 19, 2007, and was thereafter passed, adopted, and ordered to print at a regular meeting of said Council held _____, 2007, by the following vote:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

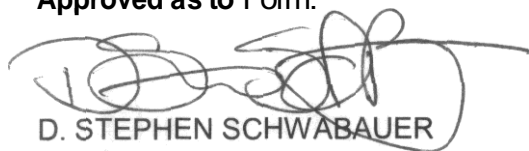
ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

I further certify that Ordinance No. ____ was approved and signed by the Mayor of the date of its passage and the same has been published pursuant to law.

RANDI JOHL
City Clerk

Approved as to Form:



D. STEPHEN SCHWABAUER
City Attorney